

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: SRC Holding, Inc., et al.,

Chapter 7

Debtor.

File Nos.: 02-40284-02-40286

Brian F. Leonard, as Trustee,

Adversary No.: 04-_____

Plaintiff,

vs.

COMPLAINT

Spielo Manufacturing Inc.,

Defendant.

Brian F. Leonard, as Trustee, for his complaint against Defendant Spielo Manufacturing Inc. ("Spielo"), states and alleges as follows:

PARTIES

1. Plaintiff is the duly appointed, qualified, and acting Trustee of the bankruptcy estate of SRC Holding, Inc., SRC Investments, and Securities Resolution Corporation, f/k/a Miller & Schroeder, Inc., Miller & Schroeder Investments, Inc., and Miller & Schroeder Financial, Inc., Bankruptcy File Nos. 02-40284, 02-40285, and 02-40286, respectively.

2. Spielo is a corporation having its principal place of business at 654 Malefant Boulevard, P.O. Box 124, Moncton, New Brunswick, Canada.

JURISDICTION

3. This Court has jurisdiction over the issues under 28 U.S.C. § 1334 and 157. This Complaint arises under various provisions of the Securities and Exchange Act of 1934, Minnesota law, and 18 U.S.C. § 152.

FACTUAL ALLEGATIONS

4. In 1994, Miller and Schroeder Financial, Inc. (now Securities Resolution Corporation) ("**MSF**") underwrote and sold a private placement of Spielo securities (the "**Private Placement**").

5. In connection with the Private Placement, MSF was granted a number of warranties to purchase stock of Spielo (the "**Warrants**").

6. The Warrants were owned by MSF on January 22, 2002, the date MSF filed its petition under Title 11 of the United States Code. Accordingly, the Warrants became property of MSF's bankruptcy estate.

7. On or about December 6, 2002, Susan Hicks, the Chief Financial Officer of Spielo ("**Hicks**") telephoned the Plaintiff and explained that Spielo desired to purchase the Warrants at the price of \$1.50 per Warrant. During that telephone conversation, Hicks stated and represented that Spielo had 2,691,175 shares outstanding, and had a shareholder equity of \$14,556,563.00. Hicks further stated and represented that Spielo had no intent, plans, or business strategy to sell its shares, and that no market for the company's shares or the Warrants existed.

8. Hicks further stated that Spielo had previously purchased other Warrants for \$1.50 per Warrant from the holders.

9. Hicks further stated that the Warrants, having an exercise price of approximately \$9.00 per share, had no value because the book value of Spielo's shares was \$5.00 per share.

10. Shortly before or after December 6, 2002, Hicks sent various financial statements (the "**Financial Statements**") of Spielo to the Plaintiff, representing that such Financial Statements reflected the true value of Spielo and its shares. In the telephone conversation of December 6, 2004,

Hicks stated that Spielo's motive for purchasing the Warrants was simply to "clean up Spielo's balance sheet."

11. In reliance on the statements and representations of Hicks, and in reliance on the Financial Statements, the Plaintiff agreed to sell the Warrants to Spielo for \$1.50 per Warrant, and subsequently duly filed, and the Clerk's office served, a notice of sale to all creditors, and ultimately an Order approving of the sale thereof of the Warrants was issued.

12. The representations made by Hicks as stated above were false and misleading, the Financial Statements did not accurately reflect the value for the Spielo shares, and Spielo's stated purpose for purchasing the Warrants to "clean up its balance sheet," was false and misleading

13. In part, Spielo's purpose for purchasing the Warrants was to benefit Spielo, its officers, directors, and shareholders by reducing the outstanding shares and Warrants for the purpose of facilitating a sale of its shares to GTECH Holdings Corporation ("**GTECH**"). In fact, a few months later, Spielo and GTECH entered into an agreement under which GTECH would purchase all of the outstanding shares of Spielo for approximately \$77.50 per share.

14. Spielo knew, or had reason to know, that the value of the Warrants was far greater than \$1.50 per Warrant at the time Hicks made the foregoing statements and representations to Plaintiff, and at the time, the Financial Statements were sent to Plaintiff.

15. The Plaintiff relied on Hicks' representations in deciding to sell the Warrants to Spielo. If Spielo had not made its false and misleading representations, the Plaintiff would own the Warrants. Such Warrants were worth \$2,393,931.50.

16. The Plaintiff has suffered damages of at least \$2,393,931.50 as a result of Spielo's fraudulent conduct.

COUNT I
SECURITIES ACT OF 1934

17. Plaintiff restates and realleges each of the allegations contained in the preceding paragraphs as fully set forth herein.

18. Spielo violated Section 10(b) of the Exchange Act (15 U.S.C. § 78(jb) and 17 C.F.R. § 240.10(b-5)) because it employed devices, schemes, or artifices to defraud, made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or course of business that operated as a fraud or deceit upon Plaintiff in connection with its purchase of the Warrants.

19. The Warrants are securities under the 1934 Securities Exchange Act.

20. Spielo made false and misleading statements, representations, and omissions to Plaintiff in connection with the purchase of the Warrants, by misstating the motive for Spielo purchasing the Warrants and misrepresenting the value of the Spielo shares through the use of the Financial Statements, and failing to inform Plaintiff that Spielo intended to sell its shares to a third party for a far greater price than the book values of the shares as reflected in the Financial Statements.

21. Spielo induced the Plaintiff to sell the Warrants in order to achieve an acquisition by GTECH at a share price much higher price than \$1.50 per Warrant paid to Plaintiff.

22. Plaintiff relied on Spielo's misrepresentations, statements, and omissions in selling Warrants to Spielo.

23. As a direct and proximate result of Spielo's false and fraudulent misrepresentations, Plaintiff has suffered damages in the amount of at least \$2,393,931.50.

COUNT II
MINNESOTA SECURITIES ACT

24. Plaintiff restates and realleges each of the allegations contained in the preceding paragraphs as fully set forth herein.

25. Spielo violated Minnesota Statutes § 80A.01, et seq. because it employed devices, schemes, or artifices to defraud, made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or course of business that operated as a fraud or deceit upon Plaintiff in connection with the purchase of the Warrants.

26. Plaintiff suffered damages of \$2,393,931.50 as a proximate result of Spielo's false and fraudulent misrepresentations. Plaintiff is entitled to recover his attorneys' fees, and all costs under M.S. 80A.23 (2).

COUNT III
18 U.S.C. § 152

27. Plaintiff restates and realleges each of the allegations contained in the preceding paragraphs as fully set forth herein.

28. By its false and fraudulent misstatements and omissions, Spielo received, and attempted to receive, money, rewards, and advantages to the detriment of the bankruptcy estate of the above Debtor.

29. By virtue of the false and fraudulent statements and omissions, Plaintiff suffered direct and proximate damages of \$2,393,931.50.

COUNT IV
COMMON LAW FRAUD

30. Plaintiff restates and realleges each of the allegations contained in the preceding paragraphs as fully set forth herein.

31. Spielo intentionally and negligently, falsely and fraudulently misrepresented (a) its motive for purchasing the Warrants, (b) the value of the Warrants, and (c) the value of Spielo's common stock as represented in the Financial Statements. Spielo also intentionally failed to inform Plaintiff that Spielo intended to sell its shares to a third party. The false and fraudulent misrepresentations and omissions include:

- (a) stating that its motive for purchasing the Warrants was simply to "clean up its balance sheet," when its true motive was to facilitate a sale of its shares to GTECH or another third party at a great profit to Spielo's existing shareholders.
- (b) stating that the Financial Statements accurately reflected the true value of Spielo's shares, when Spielo knew the actual value of its shares was far greater.
- (c) stating that no market existed for the Warrants, when Spielo knew that the Warrants had far greater value than \$1.50 per Warrant.
- (d) failing to inform Plaintiff that Spielo and its shareholders intended to sell the shares of Spielo to a third party.

32. At the time Spielo made such false and fraudulent misrepresentations, Spielo knew the same were false, and Spielo intended that the Plaintiff would rely on such misrepresentations.

33. Plaintiff reasonably, properly, and justifiably relied on Spielo's misrepresentation and acted without knowledge of Spielo's omissions in selling the Warrants to Spielo.

34. Plaintiff would not have sold the Warrants for \$1.50 per share if the false and fraudulent misrepresentations by Spielo had not been made.

35. Plaintiff has suffered damages in the amount of at least \$2,393,931.50 by reason of the direct and proximate cause of the false and fraudulent misrepresentations of Spielo.

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff judgment against Spielo as follows:

1. The amount of \$2,393,931.50, as compensatory damages, plus such other amounts as may be proven at trial, plus Plaintiff's attorneys' fees, interest, costs, disbursements, and expenses, and for such other and further relief as the Court deems just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: March 26, 2004

/e/ Thomas C. Atmore
By _____
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